Milling Co., 12 Oh. Dec. 695; *Vaughn's Seed Store* v. *Stringfellow*, 56 Fla. 708. In following this rule practically the same result is obtained as is reached by the cases in the first class, since the loss sustained from having the land idle is usually equivalent to the expected profits. A large number of cases refuse to allow a recovery for losses due to the idleness of the land and reach a different conclusion from that of the foregoing cases. *Ferris* v. *Comstock, Ferre & Co.*, 33 Conn. 513; *Butler* v. *Moore*, 68 Ga. 780; *Reiger* v. *Worth Co.*, 127 N. C. 230.

SPECIFIC PERFORMANCE—OF BUILDING CONTRACT.—The defendant construction company agreed to construct a drainage system for an organized district, and agreed to receive monthly payments as the work progressed. The first payments were to be in cash and the remainder in notes. After the work was more than half completed and the defendant had received all the cash under the contract, the defendant refused to proceed. The work was in imminent danger of being destroyed, and the surrounding lands injured by overflow. It appeared that it was practically impossible to get another contractor to complete the work within a reasonable time. *Held*, that upon a finding that the notes were amply secured the lower court properly decreed specific performance of the contract. *Board of Commissioners* v. *Wills & Sons*, (D. C. 1916), 236 Fed. 362.

It is often stated that equity will not enforce a building contract because to do so would require constant supervision by the court. *Armour* v. *Connolly*, (N. J. 1901) 49 Atl. 1117; *LaHogue Drainage Dist.* v. *Watts*, 179 Fed. 690. FRY, SPECIFIC PERFORMANCE (5th Ed.) 47. However, as early as 1694, the court of chancery granted specific performance of a contract to build a house at the petition of the land-owner's heir. *Holt* v. *Holt*, 1 Eq. Abr. 274, p. 11. Specific performance is often granted in cases where the defendant has agreed to build a structure on his own land, more especially when the land is conveyed to the defendant by the plaintiff upon that condition. *Murray* v. *N. W. R. R. Co.*, 64 S. C. 520, 42 S. E. 617; *Parrott* v. *Atl. & N. C. R. R. Co.*, 165 N. C. 295, 81 S. E. 348. These cases show that there is no inherent disability in a court of equity, preventing it from granting specific performance of a building contract. In most cases where the structure is to be on the plaintiff's land the remedy at law is perfectly adequate, for the plaintiff can hire another to perform the contract and recover damages from the defendant in an action at law. In such cases specific performance is rightly refused. Likewise a court is justified in denying equitable relief where the contract is too indefinite, even when the remedy at law is inadequate. *Ward* v. *Newbold*, 115 Md. 689, 81 Atl. 793; see also *Jones* v. *Parker*, 163 Mass. 564. In the principal case, however, the remedy at law is clearly inadequate and the terms of the contract sufficiently definite to grant specific performance.

TENANCY IN COMMON—CONVEYANCE BY COTENANT OF SPECIFIC PROPERTY.—A tenant in common who owned an undivided five-eighteenths of a tract of land comprising ninety-nine acres, deeded twenty-seven acres of same to de-

fendant, describing the portion so conveyed by metes and bounds. Complainants, who are also part owners of the land, bring this suit against defendant alone for partition of such particular part. *Held,* defendant is entitled to have the entire tract valued, and have set apart to it, in severalty, such portion as represents five-eighteenths in value of the whole, and if upon such valuation it shall appear that the twenty-seven acres are not of greater value than five-eighteenths of the entire tract the decree will direct the allotment thereof to the defendant, or if a part thereof is found to be of such value, such part should be allotted. *Highland Park Mfg. Co.* v. *Steele,* 235 Fed. 465.

As to the exact interest which is passed by such a deed, the courts are not agreed. They do agree, however, that the grantee has no absolute right on partition to have the described land allotted to him, and that the determination reached must leave the rights of other tenants unprejudiced. Beyond this there is conflict. It was early held that a conveyance of this sort was absolutely void. *Griswold* v. *Johnson,* 5 Conn. 363, but that decision was later modified by the same court when it concluded that the deed would be validated if the other co-tenants choose to affirm it. In some jurisdictions the effect of the grant is contingent upon the result of the partition suit. If by chance the portion conveyed happens to be set off as the share of the grantor it passes, otherwise the grantee takes nothing. *Cressey* v. *Cressy,* 215 Mass, 65, 102 N. E. 314; *Kenoye* v. *Brown,* 82 Miss. 607, 35 So. 163; *Benedict* v. *Torrent,* 83 Mich. 181, 47 N. W. 129. Another view is that the grantee takes the interest of the grantor, whatever that may be. *Lessee of White* v. *Sayre,* 2 Ohio 110. The decision in the principal case is more favorable to the grantee than any of these, since he acquires the interest of his grantor, and unless other equities interfere is, upon partition, allotted the land described in his deed. This determination may be open to the objection that the equity of the grantee, in the land described, is given more weight than would be accorded a desire on the part of the grantor to be allotted some particular portion. This might lead to colorable conveyances. Such a possibility would be obviated by permitting the deed to pass the interest of the grantor, but denying it any influence on the result of the partition. The instant case is supported by the following: *Harrell* v. *Mason,* 170 Ala. 282, 54 So. 104; *Worthington* v. *Staunton,* 16 W. Va. 209; *Young* v. *Edwards,* 33 S. C. 404, 11 S. E. 1066; *Maverick* v. *Barney,* 88 Tex. 560, 32 S. W. 512; *Moonshine Co.* v. *Dunman,* 51 Tex. Civ. App. 159, 111 S. W. 161.

TRIAL—SEPARATION OF JURY AFTER FINAL SUBMISSION OF CASE.—In a civil case the jury stated to the associate, after the judge had left the court one evening, that they had agreed to a verdict on two counts but could not agree on the third, and they then separated for the night. Coming before the judge the next morning they gave a verdict on all three counts. Judgment was entered on the verdict so rendered and accepted. *Held,* that the verdict was valid inasmuch as no prejudice was shown. *Fanshaw* v. *Knowles,* [1916] 2 K. B. 539.